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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9449 of 1999

with

SPECIAL CIVIL APPLICATIONS No. 9450 of 1999,
9451, 9452, 9453 of 1999 and 9514 of 1999.

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

and

Hon'ble MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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RADHESHYAM TILOCHAND AGARWAL SARAOGI

Versus

UNION OF INDIA

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Appearance:

MR PARESH M DAVE for Petitioner

MR MUKESH R SHAH for Respondents.

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CORAM : MR.JUSTICE M.R.CALLA

and

MR.JUSTICE N.G.NANDI

Date of decision: 14/06/2001

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

Mr. P.M. Dave for the petitioners. Mr. Mukesh R. Shah for the respondents. Rule. Mr. Mukesh R. Shah waives the service of Rule for the respondents. In the facts and circumstances of the case on the request of learned counsel of both the parties the matters are taken up for final hearing right today. All these 6 Special Civil Applications are based on identical facts and involve common questions and therefore we propose to decide all these petitions by this common judgment and order as under.

2. The show cause notice dated 16th of July 1997 was issued to the company as well as its Directors demanding the duty and it was also proposed to impose penalties. The replies had been filed to this notice and the proceedings were pending till 1-9-1998 when the Kar Vivad Samadhan Scheme was introduced. Under this Kar Vivad Samadhan Scheme, 1998, which came into force on 1st of September 1998 the declarations were to be made on or before 31st September 1998. Under the said Scheme the company settled the matter and the settlement became final with the payment of 50% of the tax as envisaged by the Scheme itself. However, the declarations made on behalf of the Directors and others, i.e., co-noticees, were not accepted and the order was passed on 30th of October 1998 against them. Thereafter an order was passed on 30th of November 1998 imposing penalties on the Directors and others. Later on, the Kar Vivad Samadhan Scheme (Removal of Difficulties) Order 1998 was issued by the Central Government on 8th of December 1998. It was a statutory order and under Section 1(2) of this order it was provided that it will relate back to 1.9.1998, i.e., the date on which the Kar Vivad Samadhan Scheme itself had come into force. As per this statutory order it was provided that in case the dispute has been settled by the company, the proceedings will be treated to be concluded against the other Directors/co-noticees in case the notice was pending as on the date of declaration.

3. In view of this statutory order, the petitioners herein made a representation on 24th December 1998 that the order imposing penalties against them may not be acted upon because the company had already settled the dues and under Section 1(2) of the Kar Vivad Samadhan Scheme (Removal of Difficulties) Order 1998 their

liability had come to an end with the settlement of dues by the company as the Removal of Difficulties Order itself provided that it will be effective from 1.9.1998. This order dated 8.12.1998 is reproduced as under :

MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

New Delhi
Dated the 8th December,
1998.

O r d e r

S.O. (E) In exercise of the powers conferred by sub-section (I) of Section 97 of the Finance (No.2) Act, 1998 the Central Government hereby makes the following order, namely :-

1. (1) This order may be called the Kar Vivad Samadhan Scheme (Removal of Difficulties) Order, 1998.

(2) It shall be deemed to have come into force on 1st day of September, 1998.

2. Where a declaration to the designated authority has been made in respect of tax arrear in relation to indirect tax enactment for the amount of duties (including drawback of duty, credit of duty or any amount representing duty), cesses, interest, fine or penalty which constitutes the subject matter of a demand notice issued on or before the 31st day of March, 1998 by remaining unpaid and pending determination on the date of making declaration and, where in respect of the same matter stated in the declaration, a show cause notice has also been issued to any other person and is pending adjudication on the date of making declaration, then no civil proceedings or imposition of fine or penalty shall be proceed with against such other person and in such case the settlement in favour of the declarant under sub-section (1) of Section 90 shall

be deemed to be the full and final in respect of such other person also on whom show cause notice was issued on the same matter covered under the declaration."

Sd/- LATA GULATI
Under Secretary to Government of
India.

4. The respondents have opposed this claim on the ground that on 8th of December 1998 when the aforesaid Removal of Difficulties Order was issued, the orders with regard to the penalties had already been passed against the petitioners on 30th of November 1998 after the rejection of their claim on 30th October 1998.

5. We have considered the submissions made on behalf of both the sides. In teeth of the fact that the Removal of Difficulties Order itself has been made effective from 1.9.1998 and which is clearly retroactive in nature, the submission of the respondents cannot be accepted. If such interpretation is taken, it would lead to discriminatory and unjust results. Petitioners' claim that their liability was over with the settlement of the dues by the company itself is well-founded and the same cannot be defeated merely because the orders had been passed on 30th October 1998 and 30th November 1998 with regard to them. If any co-noticee's or Directors' and others' case has remained pending beyond 8th of December 1998 he would get the benefit of Removal of Difficulties Order and merely because in certain cases the order has been passed on 30th October 1998 and 30th November 1998 with regard to the imposition of penalties they will not be able to get the advantage of this statutory order which itself has been effective from 1.9.98. The intention behind the Order of Removal of Difficulties and in making it retroactive from 1.9.1998 clearly shows that the same was made to bring an end to all these controversies, once the dues were settled by the company. In face of the effective date, i.e. 1.9.1998 of the Order of Removal of Difficulties, the orders dated 30.10.1998 and 30.11.1998 have to be treated as non-existent. In this background, the representation dated 24.12.1998 made by the petitioners subsequent to the issue of Removal of Difficulties Order on 8.12.1998 ought to have been accepted and the proceedings should have been treated to have been closed against them. Unfortunately that has not happened and the same has precipitated the filing of these petitions.

6. For the reasons aforesaid, all these 6 petitions deserve to be allowed. All these 6 petitions are hereby allowed and it is observed that the orders dated 30th October 1998 and 30th November 1998 passed against the petitioners shall not be given effect to and acted upon against them and it will be treated as if these orders had never been passed against them and the case of the present petitioners shall also be treated as covered and settled under the Kar Vivad Samadhan Scheme (Removal of Difficulties) Order, 1998 and the proceedings which were initiated against the petitioners under the show cause notice dated 16th July 1997 shall stand terminated. Rule is made absolute accordingly. No order as to costs.

[ M.R. Calla, J. ]

[ N.G. Nandi, J. ]

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